

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1988**

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**Introduced by Assembly Member Chávez**

February 19, 2014

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An act to amend ~~Section~~ Sections 125107 and 125220 of, to amend, renumber, and add Sections 125222 and 125224 of, to add Sections 125225, 125225.1, and 125225.2 to, and to repeal Sections 125221 and 125223 of, the Public Utilities Code, relating to transportation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1988, as amended, Chávez. North County Transit District: ~~contracts; flexible procurement process.~~

Existing law provides for creation of the North County Transit District, with various powers and duties relative to the planning and operation of a transit system in north San Diego County. *Existing law provides for the district to be governed by a board of directors, and requires compensation in the amount of \$75 per day, not to exceed \$300 per month, be paid to each board member or alternate for attending board meetings and for other related activities.* Existing law authorizes the district to make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, but not limited to, contracts and stipulations to indemnify and save harmless, to employ labor, to contract with a private patrol operator, the county sheriff and municipal police departments within described areas, and other transit development boards for security, police, and related services, and to do all acts necessary and convenient for the full exercise of the district's powers granted pursuant to these provisions.

This bill would increase that compensation for board members to \$150 per day not to exceed \$600 in any month, and would correct an erroneous cross-reference in these provisions.

The bill would revise and recast the district's authority to enter into contracts that the district determines are in its best interest by requiring the board of directors of the district to establish and use a specified flexible procurement process to maximize the efficient use of public funds. The bill would, among other things, generally require contracts for the acquisition or lease of materials, supplies, or equipment in an amount of \$100,000, or in excess of that amount as authorized by the board, be made or entered into with the lowest responsible bidder that meets the specifications. The bill would authorize the board to use any procurement method authorized for state or local agencies under state or federal law, including, but not limited to, a competitive negotiation process, and would require the board to maintain acquisition and contracting guidelines and comply with those guidelines in the procurement of all goods and services.

The bill would authorize the board to purchase supplies, equipment, or materials in the open market, in certain circumstances, and would also authorize the executive director of the board to make expenditures and take immediate remedial measures to avert or alleviate damage to, or to repair or restore damaged or destroyed property of, the district that are necessary to ensure that the district's facilities are available to serve the transportation needs of the general public or to comply with any state or federal regulation with respect to the operation of public transportation services. The bill would also specify procedures for single source procurement and for a person to submit a protest to a procurement solicitation or a notice of intent to award.

Because this bill would impose new duties on local public officials, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 125107 of the Public Utilities Code is*  
2 *amended to read:*

3     125107. (a) Each member of the board, including the alternate  
4 members appointed pursuant to Section 125051, shall be paid  
5 ~~seventy-five one hundred fifty~~ dollars ~~(\$75)~~ (\$150) for each day  
6 the member or alternate attends meetings of the board, but not to  
7 exceed ~~three six hundred~~ dollars ~~(\$300)~~ (\$600) in any month, and  
8 his or her necessary and reasonable expenses in performing his or  
9 her duties as a board member.

10    (b) In addition to the compensation prescribed by subdivision  
11 (a), the board may, by resolution, authorize and designate members  
12 and alternates to be compensated for representing the board at  
13 specified meetings of other governmental entities and public  
14 agencies. Compensation may be ~~seventy-five one hundred fifty~~  
15 dollars ~~(\$75)~~ (\$150) for each day the designated member or  
16 alternate attends specified meetings, not to exceed ~~three six hundred~~  
17 dollars ~~(\$300)~~ (\$600) in any month.

18     ~~SECTION 1.~~

19     *SEC. 2. Section 125220 of the Public Utilities Code is amended*  
20 *to read:*

21     125220. The district may make contracts and enter into  
22 stipulations of any nature whatsoever, either in connection with  
23 eminent domain proceedings or otherwise, including, but not  
24 limited to, contracts and stipulations to indemnify and save  
25 harmless, to employ labor, to contract with a private patrol operator  
26 licensed pursuant to Article 4 (commencing with Section 7583)  
27 of Chapter 11.5 of Division 3 of the Business and Professions  
28 Code, the county sheriff and municipal police departments within  
29 the areas described in Section 125052, and other transit  
30 development boards for security, police, and related services, and  
31 to do all acts necessary and convenient for the full exercise of the  
32 powers granted in this division.

33     *SEC. 3. Section 125221 of the Public Utilities Code is repealed.*

34     ~~125221. Immediately upon holding its first meeting, the board~~  
35 ~~shall proceed to negotiate with the existing municipal transit~~  
36 ~~operators within its area of jurisdiction to acquire the capital transit~~  
37 ~~equipment and facilities of the municipal transit operators.~~

1     *SEC. 4. Section 125222 of the Public Utilities Code is amended*  
2     *and renumbered to read:*

3     ~~125222.~~

4     125221. The district may contract with any department or  
5     agency of the ~~United States of America, with~~ federal government,  
6     any other public agency, or ~~with~~ any person upon such terms and  
7     conditions as the district finds is in its best interest.

8     *SEC. 5. Section 125222 is added to the Public Utilities Code,*  
9     *to read:*

10    125222. (a) *The Legislature finds and declares that a*  
11    *compelling interest exists in ensuring that all federal, state, local,*  
12    *and private funds available to the district are captured and used*  
13    *in a timely manner. In order to maximize the use of federal, state,*  
14    *local, and private funds and to maintain a competitive posture in*  
15    *seeking supplemental federal funds, the district shall have the*  
16    *authority to establish and use a flexible procurement process to*  
17    *maximize its efficient use of public funds.*

18    (b) *Except in cases where an item of a specified brand or trade*  
19    *name is the only item that will properly meet the needs of the*  
20    *district or in an emergency declared by the vote of two-thirds of*  
21    *all the members of the board, all contracts for the acquisition or*  
22    *lease of materials, supplies, or equipment in an amount of one*  
23    *hundred thousand dollars (\$100,000), or in excess of that amount*  
24    *as authorized by the board, shall be made or entered into with the*  
25    *lowest responsible bidder that meets the specifications. For*  
26    *purposes of determining the lowest bid, the amount of sales tax*  
27    *shall be excluded from the total amount of the bid. When the*  
28    *expected purchase amount of the contract exceeds five thousand*  
29    *dollars (\$5,000) and does not exceed one hundred thousand dollars*  
30    *(\$100,000), the board shall seek a minimum of three quotations,*  
31    *either written or oral, to permit comparison of prices and other*  
32    *terms.*

33    (c) *Except in cases of an emergency declared by the vote of*  
34    *two-thirds of the membership of the board, the board shall for all*  
35    *contracts for the acquisition of services that exceed one hundred*  
36    *thousand dollars (\$100,000), that are not within the category of*  
37    *services defined in Section 4525 of the Government Code, solicit*  
38    *bids in writing and award the contract in a competitive*  
39    *procurement process that is in the best interest of the district,*  
40    *including, but not limited to, a negotiated procurement that may*

1 *or may not evaluate price as a consideration. When the expected*  
2 *amount of the service contract exceeds five thousand dollars*  
3 *(\$5,000) and does not exceed one hundred thousand dollars*  
4 *(100,000), the board shall seek a minimum of three quotations,*  
5 *either written or oral, to permit comparison of prices and other*  
6 *terms.*

7 *(d) The board shall award contracts for architectural, landscape*  
8 *architectural, engineering, environmental, land surveying services,*  
9 *and construction project management services that are in excess*  
10 *of one hundred thousand dollars (\$100,000) in accordance with*  
11 *the provisions of Chapter 10 (commencing with Section 4525) of*  
12 *Division 5 of Title 1 of the Government Code.*

13 *(e) Notwithstanding any provision of this chapter, the board*  
14 *may use any procurement method authorized for state or local*  
15 *agencies under state or federal law, including, but not limited to,*  
16 *a competitive negotiation process in accordance with the provisions*  
17 *of Article 7.5 (commencing with Section 20216) of Chapter 1 of*  
18 *Part 3 of Division 2 of the Public Contract Code. The board shall*  
19 *maintain acquisition and contracting guidelines and comply with*  
20 *those guidelines in the procurement of all goods and services.*

21 *(f) Provisions in any federally funded contract concerning*  
22 *disadvantaged business enterprises that are in accordance with*  
23 *the request for proposals shall not be subject to negotiation with*  
24 *the successful bidder.*

25 *SEC. 6. Section 125223 of the Public Utilities Code is repealed.*

26 ~~125223. Contracts for the purchase of supplies, equipment,~~  
27 ~~and materials in excess of fifty thousand dollars (\$50,000) shall~~  
28 ~~be awarded to the lowest responsible bidder after competitive~~  
29 ~~bidding, except in an emergency declared by the vote of two-thirds~~  
30 ~~of the membership of the board.~~

31 *SEC. 7. Section 125224 of the Public Utilities Code is amended*  
32 *and renumbered to read:*

33 ~~125224.~~

34 *125223. (a) If, after rejecting bids received under Section*  
35 *125223, 125222, the board determines and declares by a two-thirds*  
36 *vote of all of its members that, in its opinion, the supplies,*  
37 *equipment, or materials may be purchased at a lower price in the*  
38 *open market, the board may proceed to purchase these supplies,*  
39 *equipment, or materials in the open market without further*

1 observance of the provisions regarding contracts, bids, or  
2 advertisements.

3 *(b) If, after solicitation of bids under Section 125222, the board*  
4 *determines and declares by a majority vote that it has not received*  
5 *a responsive bid, the board may proceed to purchase the supplies,*  
6 *equipment, or materials in the open market without further*  
7 *compliance with any contracting, bidding, or advertising*  
8 *requirements.*

9 SEC. 8. Section 125224 is added to the Public Utilities Code,  
10 to read:

11 125224. (a) Upon determining that immediate remedial  
12 measures to avert or alleviate damage to, or to repair or restore  
13 damaged or destroyed property of, the district are necessary in  
14 order to ensure that the facilities of the district are available to  
15 serve the transportation needs of the general public or to comply  
16 with any state or federal regulations with respect to the operation  
17 of public transportation services, and upon determining that  
18 available remedial measures, including procurement in compliance  
19 with Sections 125222 and 125223 are inadequate, the executive  
20 director may authorize the expenditure of money previously  
21 appropriated by the board specifically for the direct purchases of  
22 goods and services, without complying with Section 125222 or  
23 125223.

24 (b) The executive director, after the expenditure authorized  
25 under subdivision (a) has been made, shall submit to the board a  
26 full report explaining the necessity for that action.

27 SEC. 9. Section 125225 is added to the Public Utilities Code,  
28 to read:

29 125225. Notwithstanding any provision of this article, and  
30 upon a finding by two-thirds of all members of the board that a  
31 purchase in compliance with Sections 125222 and 125223 does  
32 not constitute a method of procurement adequate for the operation  
33 of the district's facilities or equipment, the board may direct the  
34 procurement of prototype equipment or modifications in an amount  
35 sufficient to conduct and evaluate operational testing without  
36 further compliance with any contracting, bidding, or advertising  
37 requirements.

38 SEC. 10. Section 125225.1 is added to the Public Utilities  
39 Code, to read:

1     125225.1. Notwithstanding Section 125222, the board may  
2     direct the purchase of any supplies, equipment, or materials  
3     without complying with any contracting, bidding, or advertising  
4     requirements upon a finding by two-thirds of all members of the  
5     board that there is only a single source of procurement and that  
6     the purchase is for the sole purpose of duplicating, repairing, or  
7     replacing supplies, equipment, or materials that are in use,  
8     including upgrades or migrations of proprietary intellectual  
9     property.

10    SEC. 11. Section 125225.2 is added to the Public Utilities  
11    Code, to read:

12     125225.2. (a) A person who submits, or who plans to submit,  
13     a proposal in response to a procurement solicitation may protest  
14     any acquisition conducted pursuant to Section 125222 or 125223  
15     as follows:

16     (1) Protests based on the content of the procurement solicitation  
17     shall be filed with the board within 10 calendar days after the  
18     procurement solicitation is first advertised. The executive director,  
19     or the designee of the executive director, shall issue a written  
20     decision on the protest prior to the opening of the procurement  
21     solicitation. A protest may be renewed by refiling the protest with  
22     the board within 15 calendar days after the mailing of the notice  
23     of the intent to award.

24     (2) Any bidder may protest the intent to award on any ground  
25     not based upon the content of the procurement solicitation by filing  
26     a protest with the board within 15 calendar days after the mailing  
27     of the notice of the intent to award.

28     (3) Any protest shall contain a full and complete written  
29     statement specifying in detail the grounds of the protest and the  
30     facts supporting the protest. Protestors shall have an opportunity  
31     to appear and be heard before the board prior to the opening of  
32     the procurement solicitation in the case of protests based on the  
33     content of the procurement solicitation, or prior to final award in  
34     the case of protests based on other grounds or the renewal of  
35     protests based on the content of the procurement solicitation.

36     (b) The decision of the protest by the board shall be in writing  
37     and constitutes a final administrative decision for purposes of  
38     judicial review pursuant to Section 1094.6 of the Code of Civil  
39     Procedure.

1     *SEC. 12. If the Commission on State Mandates determines that*  
2     *this act contains costs mandated by the state, reimbursement to*  
3     *local agencies and school districts for those costs shall be made*  
4     *pursuant to Part 7 (commencing with Section 17500) of Division*  
5     *4 of Title 2 of the Government Code.*

O